IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10510 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMAR JAYESHKUMAR TRIKAMBHAI

Versus

DIRECTOR OF PRIMARY EDUCATION

Appearance:

1. Special Civil Application No. 10510 of 2002

MR GAURANG H BHATT for Petitioner No. 1

MR SOMPURA, Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 21/10/2002

ORAL JUDGEMENT

1. Rule. Mr.Sompura, learned AGP appearing for Respondents No.1, 2, and 3 waives service of notice of rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The short question involved in this petition is that the petitioner had changed the stream in 11th Standard from Uttar Buniyadi Stream to General Stream. The mark sheet has been issued on the basis of the performance in the 12th Standard in General Stream. It is an admitted position that the said mark sheet is not cancelled by any competent authority.

3. In my view, the issue involved in this petition is covered by the decision of this Court dated 4-9-2002 in SCA No.8473/2002 except that the only distinguishing feature is that in the said matter, after 12th Standard again another stream was opted, but the fact remained that the 12th standard mark sheet on the basis of which the application was made for PTC admission was not cancelled, whereas in the present case, the stream is changed at the 11th Standard. Whether the change of such stream is permissible or not, is for the authority to decide and I am not expressing any opinion on the said aspect. However, in the said judgement of this Court at para 5, it has been observed as under:

"5. In view of the above rival contentions of both the sides, one fact is clear that the mark sheet which is issued by the Gujarat Higher Secondary Examination Board of 12th standard HSC examination general stream is, till today, not cancelled. The respondent is not the authority who has power to decide whether the mark sheet issued of 12th standard HSC examination general stream is a legal and valid mark sheet. It is the case of the petitioner that all full disclosures were made and thereafter the petitioner has undergone the study for two years and thereafter the valid mark sheet is issued and therefore, the respondent authority is not justified in ignoring the effect of the mark sheet issued by the Gujarat State Higher Secondary Examination Board. So long as this mark sheet is either not cancelled or modified, it is obligatory upon the respondent authority to consider the same for the purpose of considering the case of the petitioner in granting admission in PTC course. At the same time since the Gujarat State Higher Secondary Examination has not taken any steps as to whether this mark sheet should be cancelled or not, I am not expressing any final view as to whether it was mandatory for the petitioner to surrender the mark sheet of 12th standard HSC examination science stream at

> the relevant time when he was granted admission to the HSC examination general stream and the said question is kept open."

I am of the view that there is no reason why the same analogy should not be made applicable in the present case also.

4. In view of the above discussion the petition is allowed to the extent by directing the respondents to consider the case of the petitioner for granting admission in PTC course general stream on the basis of mark sheet issued by the Gujarat State Higher Secondary Examination Board for the HSC examination general stream. However, it is clarified that this Court has not examined the question of cancellation of the mark sheet or legality and validity of the action of the petitioner to change the stream from 11th standard and it will be open to the authority to take steps in accordance with law if otherwise permissible. It is made clear that the admissions which are already granted will not be disturbed. The petition stands allowed to the aforesaid extent. Rule is made absolute accordingly. No costs. Direct service.

21-10-2002 (Jayant Patel, J.)

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